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*** CURRENT THROUGH THE 2011 REGULAR SESSION AND UPDATES ***
*** FROM THE ARKANSAS CODE REVISION COMMISSION THROUGH ***
*** JUNE 2, 2011 ***

Title 23 Public Utilities and Regulated Industries
Subtitle 2. Financial Institutions And Securities
Chapter 40 Sale of Prepaid Funeral Benefits

A.C.A. § 23-40-125 (2011)

23-40-125. Prepaid Funeral Contracts Recovery Program Fund -- Created -- Prepaid Funeral Contracts Recovery Program Board -- Established.

(a) There is established within the State Insurance Department Prepaid Trust Fund an account to be known as the "Prepaid Funeral Contracts Recovery Program Fund", hereinafter "fund".

(b) No money is to be appropriated from this fund for any purpose except for expenses and payment of claims of the Prepaid Funeral Contracts Recovery Program at the direction of the Insurance Commissioner and Prepaid Funeral Contracts Recovery Program Board.

(c) The fund shall be invested under the direction of the commissioner and the Treasurer of State, with advice from the Chief Fiscal Officer of the State as needed from time to time.

(d) (1) All income derived through investment of the fund, including, but not limited to, fees, interest, and dividends shall be credited as investment income to the fund and deposited therein.

(2) All income derived from fund transfers, subrogation awards, grants, orders or judgments of restitution, refunds, voluntary reimbursements or restitution, and gifts shall be credited as investment income to the fund and deposited therein.

(e) Further, all moneys deposited into the fund shall not be subject to any deduction, tax, levy, or any other type of assessment except as may be provided in this subchapter.

(f) (1) The fund shall be administered by the commissioner, with advice from the Prepaid Funeral Contracts Recovery Program Board, hereinafter "board".

(2) The purpose of the fund is to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of the impairment, insolvency, business interruption, or improper inactivity of a prepaid funeral organization licensed in this state under this chapter.

(g) (1) From the fee for each preneed funeral contract as required by § 23-40-119(d)(1)(A) and from any funds transferred to the fund pursuant to § 23-40-119(f)(1), the commissioner with board advice and consultation shall administer the Prepaid Funeral Contracts Recovery Program.

(2) The commissioner may suspend fees or unused funds transfers or deposits into the fund at any time and for any period for which the commissioner determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve in compliance with a rule and regulation of the commissioner.

(h) The commissioner with board assistance shall adopt procedures governing management of the fund, the presentation and processing of applications for reimbursement, and subrogation or assignment of the rights of any reimbursed applicant.

(i) (1) The commissioner may expend moneys in the fund for the following purposes:

(A) To make reimbursements on approved applications; and

(B) To pay related expenses involved in operating the program as permitted under state law.

(2) Reimbursements from the fund shall be made only to the extent to which such losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with all applicable rules of the fund.

(j) (1) The commissioner shall investigate all applications made and may reject or allow the claims, in whole or in part, to the extent that moneys are available in the fund.

(2) The commissioner may approve one (1) application that includes more than one (1) reparation claim for the benefit of purchasers of prepaid contracts of a licensee ordered liquidated under § 23-40-123, as part of a plan to arrange for another licensee to assume the obligations of the licensee being liquidated, if:

(A) The commissioner finds that the plan is reasonable and is in the best interests of the contract beneficiaries; and

(B) The plan is approved by a court.

(k) (1) In the event reimbursement is made to an applicant under this section, the commissioner, on behalf of the state, shall be subrogated in the reimbursed amount and may bring any action the commissioner deems advisable for the program against any person, including a prepaid licensee.

(2) The commissioner may enforce any claims that the program, on behalf of the state, may have for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and any other persons that the commissioner deems appropriate. Payments shall be made from the fund for such services.

(l) (1) There is created the Prepaid Funeral Contracts Recovery Program Board.

(2) (A) Members of the board shall consist of no fewer than five (5) nor more than nine (9) members of various licensed Arkansas prepaid funeral organizations, including one (1) consumer member selected from the Arkansas public at large.

(B) The members of the board shall be selected by member licensees, subject to approval of the commissioner.

(C) (i) Each member of the board may serve up to two (2) consecutive four-year terms.

(ii) Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to approval of the commissioner.

(D) In approving selections to the board, the commissioner shall consider, among other things, whether all member licensees are fairly represented.

(m) (1) The board shall assist the commissioner and come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the laws of this state.

(2) The fund, as well as board action, shall be subject to examination and regulation by the commissioner.

(3) (A) The board shall prepare and submit to the commissioner each year, not later than one hundred twenty (120) days after the program's fiscal year, a financial report in a form approved by the commissioner and a report of program activities during the preceding fiscal year.

(B) Upon request of a licensed prepaid funeral organization in this state, the commissioner shall provide the member prepaid funeral organization with a copy of the report.

(n) There shall be no liability on the part of and no cause of action of any nature shall arise against any member of the board, the commissioner, or his or her representatives, agents, or employees for any act or omission by them in the performance of their powers and duties under this chapter, or in its administration, dispensation, handling, or collection of funds for the program.

HISTORY: Acts 2001, No. 1043, § 7; 2003, No. 987, § 6[5]; 2003, No. 1473, § 50.